IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE BILAL NAZKI

and
THE HON'BLE Mr. JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 2914 of 2004

Between:

Supreme International rep., by its Regional Manager, Sri V.Venkata Sathyam, Flat No.206,Happy Home Apartments, D.No.32-25028, Atchayyampeta, Visakhapatnam.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep., by the Commissioner, Commercial Taxes Department,
Government of Andhra Pradesh, Nampally, Hyderabad.
2 The Deputy Commissioner, Commercial Taxes, Daba Gardens, Visakhapatnam.
3 The Commercial Tax Officer, Daba Gardens, Visakhapatnam.
4 The Commissioner, Printing and Stationery, A.P.Government Central Press, Malakpet, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Direction or order, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in trying to draw an imaginary classification between Kerosene and Non-PDS kerosene by inclusion of the latter as a separate item in the 1st Schedule of the A.P. General Sales Tax Act vide G.O.Ms.No.785 dated 9th July, 2003 as arbitrary and illegal and quash the same or alternatively declare the proceedings of the 3rd respondent dated 29.1.2004 and

their consequent demand notice dated 29.1.2004 as illegal and arbitrary and against principles of natural justice and quash the same.

Counsel for the Petitioner: Mr.SIVARAJU SRINIVAS

Counsel for the Respondents: GP for Commercial Taxes.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Justice Bilal Nazki)

Heard the learned counsel for parties.

Since the pleadings are complete, the Writ Petition is disposed of at this stage. Subject matter of dispute is G.O.Ms.No. 785, Revenue (CT.II) Department, dated: 9th July, 2003. By this G.O., after item 31 in Schedule-I of Andhra Pradesh General Sales Tax Act, 1957, item 31-A was added. The addition was with respect to non-Public Distribution System Kerosene. The point of levy was fixed as the first sale in the State and the rate of tax was 25 paise in the rupee. Item 31 in the Schedule mentions kerosene and the rate of tax is 8 paise per rupee. The petitioner is importer of kerosene and is distributing kerosene amongst his clients in the Country. He challenges the G.O. mainly on two grounds. The first ground was that the G.O. purports to have been notified by the gazette on 15.7.2003 and has been made applicable from 15.7.2003, was not a fact, and, as a matter of fact, by 15.7.2003, there was no such gazette notification. He has given some instances in the Writ Petition where he enquired from the Officers of the concerned Department till 22.7.2003 and he was told that there had been no change in the rate of the tax. He wants this Court to conduct an enquiry as to whether the gazette notification dated: 15.7.2003 had, in fact, been published. Since we have a

gazette notification before us, we feel, that it is conclusive as far as this Court is

concerned, as there is a presumption with regard to its correctness and date of issuance in terms of Section 81 of the Evidence Act. There is nothing on record to suggest anything contrary. Whether the Officers who had been approached by the petitioner were in-know of the gazette notification or not, or, whether they even after knowing about the publication of the notice did not share the information with the petitioner, would hardly make any difference. On this ground, the Writ Petition has to fail.

Secondly, it was contended that kerosene was already under Entry –31 and 8 per cent tax had to be paid on kerosene. By creating a new category of non-Public Distribution System Kerosene, the rights of the petitioner for doing his business have been violated, and, there is no intelligible criteria for distinguishing kerosene from non-Public Distribution System Kerosene. The kerosene that is being sold by the petitioner is sold for the commercial purposes, which is an admitted fact, whereas the kerosene sold through Public Distribution System is sold by the Government to a particular class of the society, which is using it as a fuel for domestic purposes. Two commodities are altogether different and different rates of tax are justified. For these reasons, we do not find merit in this Writ Petition, and, the same is, therefore, dismissed. No costs.

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BILAL NAZKI, J.

29.7.2004.

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S.ANANDA REDDY, J.

VR.

To

1 The Commissioner, Commercial Taxes Department,
Government of Andhra Pradesh, Nampally, Hyderabad.
2 The Deputy Commissioner, Commercial Taxes, Daba Gardens, Visakhapatnam.
3 The Commercial Tax Officer, Daba Gardens, Visakhapatnam.
4 The Commissioner, Printing and Stationery, A.P.Government Central
Press, Malakpet, Hyderabad.

5. Two CCs to Govt. Pleader for Commercial Taxes, High Court Bldgs., Hyderabad. (OUT).

6. Two CD copies.